

§ 352.701

5 CFR Ch. I (1-1-05 Edition)

is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

[44 FR 48952, Aug. 21, 1979]

Subpart F [Reserved]

Subpart G—Reemployment Rights of Former Bureau of Indian Affairs and Indian Health Service Employees After Service Under the Indian Self-Determination Act in Tribal Organizations

AUTHORITY: Sec. 105(i), Pub. L. 93-638, 88 Stat. 2210 (25 U.S.C. 450); E.O. 11899; 41 FR 3459; Section 352.707 also issued under 5 U.S.C. 7701, *et seq.*

SOURCE: 41 FR 27713, July 6, 1976, unless otherwise noted.

§ 352.701 Purpose.

This subpart governs reemployment rights authorized by section 105(i) of the Indian Self-Determination Act (88 Stat. 2210; Pub. L. 93-638, the Act) and E.O. 11899 after service in an Indian tribal organization under the Act.

§ 352.702 Definitions.

In this subpart:

(a) *Agency* means the Bureau of Indian Affairs and the Indian Health Service. For reemployment purposes, the Public Health Service shall be considered the agency to which Indian Health Service employees may return.

(b) *Competitive area* is the same as defined in § 351.402 of this title.

(c) *Tribal organization* is defined in section 4(c) of the Indian Self-Determination Act (88 Stat. 2204).

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

(a) *Employees entitled.* The following employees of the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service and the Public Health Service of the Department of Health and Human Services, are granted reemployment rights subject to the conditions of this subpart, to the Bureau of Indian Affairs, the Indian Health Service, or the Public Health

Service, as appropriate, if they leave their Federal employment to be employed, with no break in service following separation from their agency, by an Indian tribal organization to work in a function of their respective agency contracted under the Indian Self-Determination Act to be performed by that tribal organization:

(1) An employee serving in a competitive position under a career or career-conditional appointment and who has satisfactorily completed at least 6 months of a probationary period; or

(2) A non-temporary excepted service employee who has satisfactorily completed at least 6 months of a trial period if one is required by the agency.

(3) An employee serving under a career appointment in the Senior Executive Service (SES) who is not serving a probationary period.

(b) *Employees not entitled.* The following employees are not entitled to reemployment rights under this subpart:

(1) An employee who has received a notice of involuntary separation because of reduction in force, or other cause, not directly related to contracting under the Act to a tribal organization;

(2) An employee whose resignation has been accepted for reasons other than to accept tribal employment under this subpart; or

(3) An employee serving under a Schedule C excepted appointment.

(c) *Not related to other benefits.* Entitlement to reemployment rights does not depend on continuation of Federal employee benefits coverage during service with a tribal organization.

[41 FR 27713, July 6, 1976, as amended at 51 FR 25188, July 11, 1986; 57 FR 10124, Mar. 24, 1992]

§ 352.704 Duration of reemployment rights.

(a) *Termination of authority.* Rights are not granted to persons who leave Federal employment for employment with a tribal organization after the date (December 31, 1985, at present) specified in section 105(e) of the Indian Self-Determination Act (88 Stat. 2209).

(b) *Maximum period of entitlement.* Entitlement to reemployment terminates at the end of 6 years following the date

employment commences in the tribal organization unless exercised or otherwise terminated before that time as provided in this subpart.

§ 352.705 Return to Federal employment.

(a) *Conditions.* Reemployment rights may be exercised only under the following conditions. The individual must apply in writing to the former employing agency for reemployment not later than 30 calendar days after:

(1) Receipt of notice of involuntary separation from tribal employment. For this purpose, involuntary separation means any separation against the will and without consent of the individual.

(2) Reversion of the function to Federal operation, whether reversion is through tribal or Federal action; or

(3) Separation with the joint consent of the tribal organization and the Federal agency for reasons of personal hardship or other special circumstances.

(b) *Termination.* A former employee's entitlement to reemployment terminates for:

(1) Failure to apply for reemployment within the time limit stated in paragraph (a) of this section;

(2) Resignation from tribal service without the joint consent, described in paragraph (a)(3) of this section, of the tribal organization and the Federal employer; or

(3) Failure to accept, within 10 calendar days of receipt thereof, an offer of reemployment made under § 352.706 which is determined by the employing agency or by the Merit Systems Protection Board on appeal to be a proper offer of reemployment.

§ 352.706 Agency response to reemployment application.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible, and, in any event, within 45 calendar days after agency receipt of application.

(1) Within the competitive area the employee is entitled to reemployment in:

(i) The position held immediately before leaving the agency;

(ii) One in the same competitive level; or

(iii) Another position for which qualified and eligible at the same grade or level and in the same competitive area as the position the employee last held in the agency. The employing agency determines the position under paragraph (a)(1) (i), (ii), or (iii) of this section to which the employee is entitled. Reduction-in-force procedures shall be applied where necessary in determining the position to which the employee has a right. In applying the reduction-in-force regulations, the applicant shall be considered an employee of the agency.

(2) *Extending the area.* Responsibility for reemploying an applicant is nationwide within the agency. If the applicant is not placed under paragraph (a)(1) of this section, the agency must extend reemployment rights, based on the employee's availability, for assignment outside the competitive area. The employee is entitled to a position, for which qualified and eligible, at the same grade or level as the position last held in the agency. Where necessary, reduction-in-force procedures shall be applied in determining the position to which the employee has a right. The applicant shall be considered an employee for the purpose of applying the reduction-in-force regulations.

(b) *Employee option.* Before the competitive area is extended under paragraph (a)(2) of this section, an employee who cannot be placed under paragraph (a)(1) of this section, in the competitive area at the same grade or level as the position last held is entitled, if the employee elects, to reemployment in a position at a lower grade or level identified under the same conditions and procedures as paragraph (a)(1) of this section.

(c) *Agency option.* At any stage in the process, the agency has the option to satisfy the employee's right to reemployment by offering a vacant position which, under reduction-in-force regulations, is in accord with the employee's rights. Also, with the employee's consent, right to reemployment can be met by placement in a vacant position, for which the employee is qualified according to agency determination, and available, outside the organizational or